IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 374 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIJAY RAJ C SHAH

Versus

ABDULHAMID GAFURBHAI

Appearance:

MR NS SHETH for Petitioner

MR KC SHAH APP for Respondent No. 1

MR DF AMIN for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 03/05/2000

ORAL JUDGEMENT

Heard the learned advocates.

This Revision Application under section 397 CRPC

has been preferred by the complainant against the judgment and order dated 16th September, 1993, made by the learned Additional Sessions Judge, Banaskantha, in Criminal Revision Application No. 63/93 under section 451 IPC.

The respondent no.1 herein is the accused in the offence registered as CR No. II- 85/93 in the Panthavada Police Station. On 25th July, 1993, the accused was transporting 23 sheep and goats. He was caught by the Live Stock Inspector and offences punishable under sections 11 and 29 of the Prevention of Cruelty to Animals Act, 1960, as well as under sections 5, 8, 9 and 10 of the Bombay Animal Preservation Act, 1954, was registered against him. Pending trial, the application made for possession of the Muddamal articles under section 451 CRPC, was rejected by the learned Magistrate on 12th August, 1993. Feeling aggrieved, the accused preferred above referred Criminal Revision Application No. 63/93 in the court of the learned Additional Sessions Judge, Banaskantha. The learned Additional Sessions Judge by his judgment and order dated 16th September, 1993, recorded a finding that the live stock in question belongs to the accused and directed that the Muddamal live stock be handed over to the accused on his executing a bond in the sum of Rs.10,000/and on furnishing a surety for the like amount on condition that pending trial, the Muddamal live stock shall not be sold-off or possession of the same shall not be passed over and on further condition that the accused shall produce the Muddamal live stock before the court as and when ordered. Feeling aggrieved by the aforesaid judgment and order in Revision, Jain Sangh Panjarapole, village-Khimat, Taluka-Dhanera, has preferred the present Revision.

Mr. Sheth has contended that Panjarapole is an institution essentially concerned with the well-being of the animals. The petitioner is, therefore, vitally interested in the well-being of the muddamal live stock and it is but essential that pending trial, the possession of the live stock be handed over to the petitioner. In support of his contention, he has relied upon the judgment of this court in the matter of MANAGER, PANJARAPOLE DEODAR, CHAKARAM MORARJI NAT & ANR (1997 {2} GLR 1321). In the said matter, this court has upheld the contention not only that the Panjarapole is entitled to

claim possession of the seized live stock pending trial, but it has also locus to bring the petition for claiming such possession. However, at the same time, the court has observed that - " as a rule, the custody of the animal is not to be given to the Panjarapole, it will be for the court concerned to exercise judicial discretion for the custody of the animal. Though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formula, the court, while considering the question of custody should take into consideration and bear in mind the following criteria :

(A) The prime consideration of the court should be for the preservation of live stock and elimination of chances of further cruelty to live stock.

(B) The court should not be unnecessarily guided by emotions and sentiments.

(C) If it is a first offence, unless there are strong reasons to believe that if the custody of animal is given to accused or owner, the animal will be further exposed to cruelty, the custody should be given to owner or the person from whose possession the animal is taken, on just conditions.

(D) Looking to the nature of trial, unless presence of the animal for identification or other purpose is required, the custody should be given to the owner or person from whose custody the animal is taken, on just conditions.

(E) In case the animal or animals are likely to be forfeited to Government at the conclusion of the trial or their presence is necessary during trial, whether the object can be achieved by imposing appropriate conditions ?

(F) In case, it is considered necessary to give custody to Panjarapole, following steps be taken :

(i) Reputation of Panjarapole concerned be ascertained with respect to maintenance of animal.

(ii) Undertaking be obtained from authorities of

Panjarapole that they will maintain and take proper care of the health of animal and further, they will not claim costs for maintenance of animal from accused or owner of the animal.

(ii) They will not sell or transfer the animal and they will produce the animal as and when they are directed to do so.

(iv) If they fail to produce animal at the conclusion of trial and if the court so directs, they will pay the compensation for the loss of each animal.

(G) Keeping in view animal as a muddamal, all efforts should be made to complete the trial expeditiously.

In the present case, Mr. Sheth has not been able to point out that in the event the custody of the live stock is handed over to its owner, the live stock would be subjected to further cruelty or the same will not be produced before the court as and when required. It is not even the case of the petitioner that earlier also accused had been found guilty of any offence under the Act. Under the circumstances, I am of the view that the impugned order of the learned Sessions Judge, Banaskantha, is just and proper.

Revision is, therefore, dismissed. The impugned judgment and order dated 16th September, 1993, passed in Criminal Revision Application No. 63/93 is confirmed. Rule is discharged. Interim relief is vacated.

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JOSHI